



NEW APPLICATION
ORIGINAL



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2009 FEB 19 P 4: 37

AZ CORP COMMISSION
DOCKET CONTROL

February 17, 2009

Arizona Corporation Commission
Attn: Chris Watson
2200 North Central Avenue
Suite #300
Phoenix, AZ 85004

RR-02635B-09-0075

Re: Applicant for Existing Rail Crossing Changes, DOT #'s 025099J & 025129Y

Mr. Watson,

This application is to install additional warning devices at the Steves and Fanning railroads crossings. The existing lights and gates will not be altered but wayside horns will be installed at each crossing. The following historic information is in the context of creating a quiet zone that the wayside horns are a part of. There are other crossings in the quiet zone but no changes will be made to the warning devices, roadway configuration or pavement marking at these crossings.

In accordance with the Federal Railroad Administrations Quiet Zone ruling 49 CFR Parts 222 and 229, the City of Flagstaff, Arizona intends to create a New Quiet Zone. The intent of this action is the elimination of train horn noise at railroad crossings within the limits of the City.

Crossings Contained Within the Quiet Zone:

- | | |
|------------------------|------------------------|
| • Beaver Street | DOT Crossing # 025133N |
| • San Francisco Street | DOT Crossing # 025132G |
| • Enterprise Avenue | DOT Crossing # 025131A |
| • Steves Boulevard | DOT Crossing # 025099J |
| • Fanning Drive | DOT Crossing # 025129Y |

Arizona Corporation Commission
DOCKETED

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An on-site meeting was held on May 2, 2006 with the following attendance:

Kurt Anderson, Railroad Controls

Barry Gondron, Gannett Fleming

Chris Watson, Arizona Corporation Commission

Stu Seubert, City of Flagstaff (part time)

Randy Whitaker, City of Flagstaff

Debbie Jo Maust, City of Flagstaff

Gerry Craig, City of Flagstaff (part time)

Megan McIntyre, BNSF

Tom Chilcoat, BNSF

Note: FRA representatives could not attend due to financial situation.

At this field meeting the various safety measures were discussed that could occur at each of the crossing and a report "Quiet Zone/Wayside Horn Update December 2006, Revision 1-22-07 was issued to each participant.

In accordance with 29 CFR Part 222.43, on March 14, 2008 a Notice of Intent which included 60% drawings was provided by means of Certified Mail, Return Receipt

Requested to:

- All railroads operating over the public highway rail – grade crossings within the Quiet Zone (BNSF Railroad);
- The State Agency responsible for highway and road safety (Arizona Department of Transportation)
- The State Agency responsible for grade crossing safety (Arizona Corporation Commission)

There is a statutory 60-day comment period after the date this Notice of Intent is mailed. BNSF did have several comments that have been addressed in the 100% drawings.

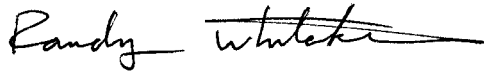
There are currently lights and gates at all five crossing within the project and these devices will not be changed as part of this project. Per the FRA Ruling to create the Quiet Zone, Beaver, San Francisco and Enterprise crossings will only require additional signage and fencing. Additional warning devices in the form of wayside horns will be installed at the Steves and Fanning crossings.

The City is funding the project and will be responsible for maintaining all signage, fencing and equipment installed as part of the project. The exception is the new electronic equipment inside the BNSF cabinet that sends a signal to the wayside horns will be maintained by BNSF.

There is not an overall agreement required to create the quiet zone but a Wayside Horn Agreement was required by BNSF.

Please do not hesitate to call or Email me at 928-226-4844 or
rwhitaker@ci.flagstaff.az.us

Thank You,

A handwritten signature in black ink that reads "Randy Whitaker". The signature is fluid and cursive, with the first name "Randy" and last name "Whitaker" clearly distinguishable.

Randy Whitaker
Senior Project Manager
City of Flagstaff

Exhibits:

- A - Site Maps
- B - U.S.DOT - Crossing Inventory Information
- C - BNSF Wayside Horn Agreement
- D - Quiet Zone/Wayside Horn Update December 2006, Revision 1-22-07
- E - Notice of Intent & 60% Design Narrative

Exhibit A

Exhibit B

U.S. DOT - CROSSING INVENTORY INFORMATION
AS OF 2/13/2009

Crossing No.: **025099J** Update Reason: **Changed Crossing** Effective Begin-Date of Record: **08/01/07**
Railroad: **BNSF BNSF Rwy Co. [BNSF]** End-Date of Record:
Initiating Agency **Railroad** Type and Position: **Public At Grade**

Part I Location and Classification of Crossing

Division:	SOUTHWEST	State:	AZ
Subdivision:	SELIGMAN	County:	COCONINO
Branch or Line Name:	E WINSL-NEEDLES	City:	In FLAGSTAFF
Railroad Milepost:	0341.19	Street or Road Name:	STEVES BLVD.
RailRoad I.D. No.:	7200	Highway Type & No.:	
Nearest RR Timetable Stn:	FLAGSTAFF	HSR Corridor ID:	
Parent Railroad:		County Map Ref. No.:	S40
Crossing Owner:		Latitude:	35.2102941
ENS Sign Installed:		Longitude:	-111.6048873
Passenger Service:	AMTRAK	Lat/Long Source:	Actual
Avg Passenger Train Count:	2	Quiet Zone:	No
Adjacent Crossing with Separate Number:			

Private Crossing Information:

Category: Public Access: **Unknown**
Specify Signs: Specify Signals:

	ST/RR A	ST/RR B	ST/RR C	ST/RR D
Railroad Use:				
State Use:				
Narrative:				

Emergency Contact: **(800)832-5452** Railroad Contact: **(913)551-4540** State Contact:

Part II Railroad Information

Number of Daily Train Movements:		Less Than One Movement Per Day:	No
Total Trains: 93	Total Switching: 0	Day Thru:	47
Typical Speed Range Over Crossing: From 1 to 55 mph		Maximum Time Table Speed:	55
Type and Number of Tracks: Main: 2 Other: 0		Specify:	
Does Another RR Operate a Separate Track at Crossing?		No	
Does Another RR Operate Over Your Track at Crossing?		Yes: ATK	

U.S. DOT - CROSSING INVENTORY INFORMATION

Crossing **025099J**

Continued

Effective Begin-Date of Record: **08/01/07**

End-Date of Record:

Part III: Traffic Control Device Information

Signs:

Crossbucks: **2**
Advanced Warning: **Yes**
Pavement Markings: **RR Xing Symbols**

Highway Stop Signs: **0**
Hump Crossing Sign: **No**
Other Signs: **1** Specify: **W/O 2**
1 **DIRECTIONA**

Train Activated Devices:

Gates: **2**
Mast Mounted FL: **2**
Cantilevered FL (Over): **2**
Other Flashing Lights: **0**
Highway Traffic Signals: **0**
Other Train Activated
Warning Devices:
Channelization:
Track Equipped with **Yes**
Train Signals?

4 Quad or Full Barrier: **No**
Total Number FL Pairs: **8**
Cantilevered FL (Not over): **0**
Specify Other Flashing Lights:
Wigwags: **0** Bells: **2**
Special Warning Devices Not
Train Activated:
Type of Train Detection: **DC/AFO**
Traffic Light **Simultaneous Preemption**
Interconnection/Preemption:

Part IV: Physical Characteristics

Type of Development: **Commercial**
Number of Traffic Lanes: **4**
Crossing Railroad:
Is Highway Paved? **Yes**
Crossing Surface: **Concrete**
Nearby Intersecting
Highway? **76 to 200 feet**
Does Track Run Down a
Street? **No**
Is Commercial Power **Yes**

Smallest Crossing Angle: **60 to 90 Degrees**
Are Truck Pullout Lanes Present? **No**
If Other:
Is it Signalized? **Yes**
Is Crossing Illuminated? **No**

Part V: Highway Information

Highway System: **Other FA Highway - Not NHS**
Is Crossing on State
Highway System: **No**
Annual Average Daily
Traffic (AADT): **011028**
Estimated Percent Trucks: **05**
Posted Highway Speed: **0**

Functional Classification of
Road at Crossing: **Urban Collector**
AADT Year: **2002**
Avg. No of School Buses per Day: **0**

U.S. DOT - CROSSING INVENTORY INFORMATION
AS OF 2/13/2009

Crossing No.: **025129Y** Update Reason: **Changed Crossing** Effective Begin-Date of Record: **08/01/07**
Railroad: **BNSF BNSF Rwy Co. [BNSF]** End-Date of Record:
Initiating Agency **Railroad** Type and Position: **Public At Grade**

Part I Location and Classification of Crossing

Division:	SOUTHWEST	State:	AZ
Subdivision:	SELIGMAN	County:	COCONINO
Branch or Line Name:	E WINSL-NEEDLES	City:	In FLAGSTAFF
Railroad Milepost:	0340.55	Street or Road Name:	FANNING DRIVE
RailRoad I.D. No.:	7200	Highway Type & No.:	
Nearest RR Timetable Stn:	FLAGSTAFF	HSR Corridor ID:	
Parent Railroad:		County Map Ref. No.:	38
Crossing Owner:		Latitude:	35.2153902
ENS Sign Installed:		Longitude:	-111.5952922
Passenger Service:	AMTRAK	Lat/Long Source:	Actual
Avg Passenger Train Count:	2	Quiet Zone:	No
Adjacent Crossing with Separate Number:			

Private Crossing Information:

Category: Public Access: **Unknown**
Specify Signs: Specify Signals:

ST/RR A ST/RR B ST/RR C ST/RR D

Railroad Use:

State Use:

Narrative:

Emergency Contact: **(800)832-5452** Railroad Contact: **(913)551-4540** State Contact:

Part II Railroad Information

Number of Daily Train Movements:		Less Than One Movement Per Day: No
Total Trains: 93	Total Switching: 0	Day Thru: 47
Typical Speed Range Over Crossing: From 1 to 55 mph		Maximum Time Table Speed: 55
Type and Number of Tracks: Main: 2 Other: 0	Specify:	
Does Another RR Operate a Separate Track at Crossing?		No
Does Another RR Operate Over Your Track at Crossing?		Yes: ATK

U.S. DOT - CROSSING INVENTORY INFORMATION

Crossing **025129Y**

Continued

Effective Begin-Date of Record: **08/01/07**

End-Date of Record:

Part III: Traffic Control Device Information

Signs:

Crossbucks: **2**
Advanced Warning: **Yes**
Pavement Markings: **Stop Lines and RR Xing Symbols**

Highway Stop Signs: **0**
Hump Crossing Sign:
Other Signs: **1** Specify: **W/O 2**
1 **DIRECTIONA**

Train Activated Devices:

Gates: **2**
Mast Mounted FL: **2**
Cantilevered FL (Over): **2**
Other Flashing Lights: **0**
Highway Traffic Signals: **0**
Other Train Activated Warning Devices:
Channelization:
Track Equipped with Train Signals? **Yes**

4 Quad or Full Barrier: **No**
Total Number FL Pairs: **6**
Cantilevered FL (Not over): **0**
Specify Other Flashing Lights:
Wigwags: **0** Bells: **2**
Special Warning Devices Not Train Activated:
Type of Train Detection: **DC/AFO**
Traffic Light Interconnection/Preemption: **Advance Preemption**

Part IV: Physical Characteristics

Type of Development: **Commercial**
Number of Traffic Lanes: **4**
Crossing Railroad:
Is Highway Paved? **Yes**
Crossing Surface: **Concrete**
Nearby Intersecting Highway? **76 to 200 feet**
Does Track Run Down a Street? **No**
Is Commercial Power **Yes**

Smallest Crossing Angle: **60 to 90 Degrees**
Are Truck Pullout Lanes Present? **No**
If Other:
Is it Signalized? **Yes**
Is Crossing Illuminated? **No**

Part V: Highway Information

Highway System: **Non-Federal-aid**
Is Crossing on State Highway System: **No**
Annual Average Daily Traffic (AADT): **008101**
Estimated Percent Trucks: **40**
Posted Highway Speed: **0**

Functional Classification of Road at Crossing: **Urban Local**
AADT Year: **2003**
Avg. No of School Buses per Day: **0**

Exhibit C

WAYSIDE HORN AGREEMENT

THIS WAYSIDE HORN AGREEMENT (hereinafter called, this "Agreement"), is entered into effective as of December 1, 2008, by and between BNSF Railway Company, a Delaware Corporation (hereinafter called, "BNSF"), and the City of Flagstaff, a municipal corporation, (hereinafter called, the "Agency").

WITNESSETH

WHEREAS, BNSF has grade crossings warning devices located at the intersections of Steves Boulevard and Fanning Drive, as indicated on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Agency is installing within the BNSF right-of-way property its automated horn system pursuant to the requirements of 49 CFR Part 222, (hereinafter called, "Wayside Horn System") with the existing automatic grade crossing warning devices shown on Exhibit "A" subject to the mutual covenants contained in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. PURPOSE

The purpose of this Agreement is as follows: provide for the ownership, installation and maintenance by Agency or its contractor of the Wayside Horn System and other related improvements at the Steves Blvd (DOT #025099J) and Fanning Drive (DOT #025129Y) at-grade crossings.

2. SCOPE OF WORK

- a. The Agency must provide BNSF in writing with the total preempt cycle time required from the start of the preempt cycle of Wayside Horn until the arrival of the train at the highway-rail crossing.
- b. BNSF will provide an interface box with contact terminals, at Agency's expense on the side of the railroad instrument cabin.
- c. Agency or its contractor will place all necessary cable and conduit and horn confirmation signage ("Confirmation X") on Railroad property in accordance with Exhibit "A", attached to and made a part of this Agreement.
- d. The Agency or its contractor will connect the Wayside Horn System control signals to the contact terminals in the interface box including all necessary cable and conduit.
- e. BNSF will provide flagging services, at Agency's sole expense, necessary to protect BNSF train operations or BNSF property as set forth in more detail on Exhibit "C" attached to and made a part of this Agreement.
- f. The Agency or its contractor must install the new Wayside Horn System.
- g. An estimate of the actual costs for BNSF work (excluding flagging, which will depend upon contractor's activities) is shown on Exhibit "B" attached to and made a part of this Agreement. In the event installation of the improvements has not commenced within six (6) months following the effective date of this Agreement, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth on Exhibit B. If the cost estimates are revised, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit B not specifically mentioned therein may be

included as a part of this Agreement upon written approval of the Agency, which approval will not be unreasonably withheld.

- h. The Agency must pay BNSF for the actual costs of any work performed by BNSF under this Agreement within thirty (30) days of the date of the invoice for such work, including flagging costs. During the construction of the improvements, BNSF may send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Upon completion of the improvements and all associated work, BNSF will send Agency a detailed invoice of final costs including flagging costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit B. Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past our credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

3. CONSTRUCTION AND MAINTENANCE

- a. BNSF will operate and maintain, at its expense, the necessary relays and the other materials required to preempt the Wayside Horn System with the grade crossing warning devices.
- b. BNSF will operate and maintain, at its expense, the grade crossing warning devices up to the contact terminals in the interface box.
- c. The Agency or its contractor must, at the Agency's expense, install the Way-Side Horn System up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- d. Following installation of the Wayside Horn System, the Agency will own, operate and maintain, at its expense, the Wayside Horn System up to and including connection to the contact terminals in the in the interface box including all necessary cable and conduit. When any such maintenance requires BNSF flagging or changes to BNSF contact terminals, Agency or its designate shall pay BNSF for all costs associated with such work
- e. The Agency shall maintain the Wayside Horn System in a good and operative condition and in accordance with all applicable laws and regulations, including without limitation Appendix E of 49 CFR Part 222.
- f. Through this Agreement, BNSF does not waive any rights it may have under existing federal law to sound the locomotive horn in case of emergency, when the Wayside Horn System is malfunctioning, when active grade crossing warning devices have malfunctioned, when roadway workers are present or when grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing of the system or as is otherwise necessary in the sole opinion of BNSF.
- g. In the event Agency defaults on any of its obligations hereunder, including without limitation, Agency's obligation to maintain the Wayside Horn System in good and operative condition, BNSF, may, at its option, remove the Wayside Horn System at the sole cost and expense of Agency. Upon removal of the Wayside Horn System, BNSF shall resume sounding the locomotive horn at the Steves Blvd (DOT #025099J) and the Fanning Drive (DOT #025129Y) at-grade crossings.

4. PROTECTION OF UNDERGROUND SYSTEMS

- a. Agency and its contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications or utility companies may be buried on BNSF's property or right-of-way. The Agency or its contractor must contact appropriate personnel to have the Lines located and make arrangements with the

owner of the Lines regarding protective measures that must be followed prior to the commencement of any work on BNSF's property. The Agency or its contractor will be responsible for contacting BNSF's Engineering Representative (Richard Barnitz at 505-767-6826) and the telecommunications or utility companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Agency or its contractor must also mark all Lines in order to verify their locations. Agency or its contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

- b. Failure to mark or identify Lines will be sufficient cause for BNSF's Engineering Representative to stop construction at no cost to BNSF until these items are completed.
- c. In addition to the liability terms contained elsewhere in this Agreement and to the fullest extent provided by law, Agency and its contractor hereby indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Agency or its contractor, subcontractors, agents and/or employees that cause or in any way or degree contribute to: (1) any damage to or destruction of any Lines on BNSF's property or within BNSF's right-of-way; (2) any injury to or death of any person employed by or on behalf of (a) any telecommunications or utility company, (b) Agency's contractor or subcontractors, or (c) Agency, and (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunications or utility company(ies). **THE LIABILITY ASSUMED BY AGENCY OR ITS CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**
- d. Agency or its contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the installation or construction of the improvements. Agency and/or its Contractor must cooperate fully with any telecommunications or utility company(ies) in performing such rearrangements.

5. INDEMNIFICATION

Agency hereby indemnifies, defends and holds harmless BNSF for, from and against any and all claims, suits, losses, damages, costs and expenses for injury to or death to third parties or BNSF's officers and employees, and for loss and damage to property belonging to any third parties (including damage to the property of BNSF officers and employees), to the extent caused by the negligence of the Agency or any of its employees, agents or contractors. The Agency also releases BNSF from and waives any claims for injury or damage to the Agency's highway traffic control signals, the Wayside Horn System, or other equipment which may occur as a result of any of the work provided for in this Agreement or the operation or the maintenance thereafter of any of the Agency's highway Wayside Horn System, the traffic control signals, cables, connections at and about the grade crossing.

- b. To the fullest extent permitted by law, Agency hereby releases, indemnifies, defends and holds harmless BNSF and BNSF's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, employees and agents for, from and against any and all claims, suits, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys fees and court costs) for injury to or death to Agency employees, agents or representatives arising out of, resulting from or related to any act or omission of Agency or any work performed on or about BNSF's property or right-of-way, including without limitation, the installation and maintenance of the Wayside Horn System by the Agency. **THE LIABILITY ASSUMED BY THE AGENCY IN THIS PROVISION WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT**

TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BNSF.

- c. "Agency further agrees to release, indemnify and hold harmless BNSF for damages resulting from any labor claims under BNSF's collective bargaining agreements (and including attorneys' fees and court costs and expenses, if the subject of litigation) brought as a consequence of Agency's installation or maintenance of the Horn System, or otherwise from implementation of the terms of this Agreement."
- d. The Agency further agrees, at its expense, in the name and on behalf of BNSF, that it will adjust and settle any claims made against BNSF and will appear and defend any suits or actions at law or in equity brought against BNSF on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by the Agency under this Agreement for which BNSF is alleged to be liable. BNSF will give notice to the Agency in writing of the receipt of pendency of such claims and thereupon the Agency must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against BNSF, BNSF may forward the summons and complaint or process in connection therewith to the Agency, and the Agency must defend, adjust or settle such suits and protect, indemnify, and save harmless BNSF from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

6. AGENCY CONTRACTOR REQUIREMENTS

- a. While on or about BNSF property, Agency and its contractors must fully comply with BNSF's "Contractor Requirements" set forth in Exhibit "C" attached to and made a part of this Agreement. The "Contractor Requirements" include clearance requirements and personal protective equipment requirements. Agency and its contractors will be responsible for becoming familiar with BNSF's "Contractor Requirements". Prior to entering BNSF property, Agency's Contractor must execute Exhibit C-1 attached to and made a part of this Agreement.
- b. Prior to entering BNSF property, each person providing labor, material, supervision or services connected with the work to be performed on or about BNSF property must complete the safety training program (hereinafter called "BNSF Contractor Safety Orientation") at the following internet website: "contractororientation.com". Agency must ensure that each of its contractors, employees, subcontractors, agents or invitees completes the BNSF Contractor Safety Orientation before any work is performed under this Agreement. Additionally, Agency must ensure that each and every contractor, employee, subcontractor, agent or invitee possesses a card certifying completion of the BNSF Contractor Safety Orientation prior to entering BNSF property. Agency must renew the BNSF Contractor Safety Orientation annually.
- c. Prior to entering BNSF property, Agency or its contractors must prepare and implement a safety action plan acceptable to BNSF. Agency must audit compliance with the plan during the course of Agency's work. A copy of the plan and audit results must be kept at the work site and will be available for inspection by BNSF at all reasonable times.

7. INSURANCE

Agency and/or its contractor must, at Agency and contractor's sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- a. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to the following:
 - ◆ Bodily Injury and Property Damage
 - ◆ Personal Injury and Advertising Injury
 - ◆ Fire legal liability
 - ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad** Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

- b. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
 - ◆ Bodily injury and property damage
 - ◆ Any and all vehicles owned, used or hired
- c. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
 - ◆ Statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- d. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:
 - ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to remove any exclusion for punitive damages.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement
- e. Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certification of insurance must reflect that no exclusion exists.

Agency agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Agency further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Agency's care, custody or control.

Agency's insurance policies through policy endorsement, must include wording which states that the policy will be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and Railroad must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railroad as additional insured must be indicated on the certificate of insurance.

Agency is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention retention or other financial responsibility for claims must be covered directly by Agency in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by Agency's insurance will be covered as if Agency elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Agency must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished.

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-766-2299

Any insurance policy must be written by a reputable insurance company acceptable to **Railroad** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Agency represents that this *Agreement* has been thoroughly reviewed by Agency's insurance agent(s)/broker(s), who have been instructed by Agency to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above. The fact that insurance (including without limitation, self-insurance) is obtained by Agency will not be deemed to release or diminish the liability of Agency including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage."

If any portion of the operation is to be subcontracted by Agency, Agency must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming **Railroad** as an additional insured, and requiring that the subcontractor release, defend and indemnify **Railroad** to the same extent and under the same terms and conditions as Agency is required to release, defend and indemnify **Railroad** herein.

Failure to provide evidence as required by this section will entitle, but not require, **Railroad** to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Agency's obligations hereunder.

For purposes of this section, **Railroad** means "Burlington Northern Santa Fe Corporation", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.